

This is Defendant Kern County Superior Court's motion for sanctions pursuant to CCP §128.7 in the amount of \$7,246.00. Defendant contends that plaintiff's motion for reconsideration of the Court's prior ruling quashing service of summons and imposing sanctions itself constitutes sanctionable misconduct.

On March 11, 2010 the Court issued its original ruling quashing service of summons on Honorable John L. Fielder and imposing sanctions on plaintiff's counsel. Notice of that ruling was served on March 18, 2010. On April 7, 2010, twenty days after service of the notice of the ruling, Plaintiff's counsel filed a motion for reconsideration. On April 20, 2010, plaintiff's counsel amended the notice of motion to indicate that he was withdrawing the request to reconsider the order quashing service. However, the amended notice indicated that plaintiff's counsel was not withdrawing his request to strike the award of sanctions against him.

The parties stipulated to continue the hearing on the motion for reconsideration to August 19, 2010. On July 29, 2010, in order to comply with the "safe harbor" provision of CCP §128.7(c)(1), Defendant served this motion for sanctions by personal service upon plaintiff's counsel.

On August 19, 2010 the Court denied the motion for reconsideration on the basis that it was untimely, and also that it failed to assert any new facts or law to support any reconsideration of the Court's March 11, 2010 order.

On August 20, 2010, Defendant filed the motion for sanctions on three grounds: 1) plaintiff's motion for reconsideration was untimely and failed to assert any new facts or law that would allow the Court to reconsider its decision pursuant to CCP §1008; 2) Plaintiff's counsel presented a declaration that lacked evidentiary support and is sanctionable pursuant to CCP §128.7(b)(3); and, 3) Plaintiff's motion included a frivolous request for a transfer to Federal Court in violation of the requirements of CCP §128.7(b)(2). Plaintiff has failed to file any opposition to the motion.¹

The Court agrees with Defendant that Plaintiff's untimely motion under CCP §1008(d) failed to assert any new facts or law to support reconsideration, and is therefore punishable as a contempt, with sanctions as allowed by CCP §128.7. The only reason the Court can see for Plaintiff's tactic was to postpone the actual payment due date for the original sanctions. Yet, this is not a valid reason for filing a motion for reconsideration, and it subjects Plaintiff's counsel to additional sanctions under the law.²

¹ The Court construes Plaintiff's failure timely to oppose this motion in writing as a concession that the motion has merit.

² The Court will not step into the morass of attempting to determine whether the declaration of Plaintiff's counsel completely lacked evidentiary support and was totally false. Although the statement in plaintiff's counsel's declaration concerning when he became attorney of record appears to be false, other statements made by counsel appear to require additional evidence to demonstrate the falsehood of plaintiff's counsel's declaration. Further, Defendant's argument regarding the frivolousness of Plaintiff's motion to transfer to

The total fees sought by the Defendant (12.2 hours for preparation of the sanctions motion) are unwarranted under the circumstances. CCP §128.7(d) provides that a sanction imposed for violation of subdivision (b) should be limited to an amount sufficient to deter repetition of the conduct. Here, the sanctionable misconduct, simply put, is the violation of CCP §1008. Accordingly, sanctions are issued against Plaintiff's counsel in the amount of \$4,623.00. The amount of \$3,623.00 is payable to Defendant's counsel, and \$1,000 is payable to the Clerk of Court. Both payments are due within 20 days of today's date.

Federal Court in violation of CCP §128.7(b)(2) is unsupported by any citation to legal authority. These grounds for sanctions are rejected.